FILED
08 JUN 11 AM 11:00
BY: DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. DARRELL BRAITHWAITE, Defendant.	)	Case No. '08 MJ 1821 COMPLAINT FOR VIOLATION OF 18 U.S.C. Sections 922(g)(1) and 924(a)(2) Felon in Possession of a Firearm (Felony)

The undersigned complainant being duly sworn states:

COUNT 1

On or about, May 5, 2008, within the Southern District of California, the defendant, Darrell BRAITHWAITE, having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting interstate commerce a firearm, that is, a CZ 9 mm semi-automatic handgun, model 52, said firearm having been shipped and transported in interstate commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

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And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Michael Cote, Special Agent
Bureau of Alcohol, Tobacco, Firearms & Tobacco (ATF)

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 11th DAY OF June 2008.

RUBEN B. BROOKS
UNITED STATES MAGISTRATE JUDGE

CONTINUATION OF COMPLAINT:
DARRELL BRAITHWAITE

STATEMENT OF FACTS

I, Michael G. Cote, being duly sworn, hereby depose, and say:

I have been employed as a Special Agent (S/A) with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) since August 2001. Prior to my employment with ATF, I was a police officer with the city of San Diego for approximately 8 years. I have attended the Federal Law Enforcement Training Center in Glynco, Georgia, where I graduated from the Criminal Investigators' Training Program (CITP). Upon completing CITP, I attended the ATF National Academy where I received instruction in the recognition, identification and prosecution of federal firearms violations. I graduated the San Diego Regional Police Academy in June 1994. During my tenure with ATF, I have been involved in numerous investigations involving federal firearms, arson, and explosive violations, as well as federal violations of contraband cigarette laws.

This affidavit is made in support of a criminal complaint and arrest warrant for Darrell BRAITHWAITE ("BRAITHWAITE") for violation of Title 18, United States Code, Section 922 (g) (1), i.e., for unlawful possession of a firearm/ammunition by a convicted felon.

During the course of my duties, I have learned the following information based upon my discussions with the named witnesses or by having read the reports of or talked with other law enforcement officers who have spoken directly with the named witnesses. All references to date refer to this calendar year unless otherwise stated.

On May 7, 2008, I reviewed a copy of Chula Vista Police Department ("CVPD") Officer Carlos Marques' police report. BRAITHWAITE had been arrested by CVPD for felon in possession of a firearm, possession of a controlled substance, possession of marijuana, and driving under the influence of a controlled substance. The following details are based upon my review of Officer Marques' arrest report.

On May 5, 2008, at approximately 0025 hours, CVPD Officer Marques was on duty, in uniform, and working a sobriety/driver's license checkpoint in the 1000 block of Third Avenue in Chula Vista. Officer Marques' approached a driver, later identified as Darrell BRAITHWAITE, driving a Ford

Thunderbird that was stopped at the checkpoint.

While Officer Marques was talking to BRAITHWAITE, he could smell a strong odor of marijuana emanating from BRAITHWAITE'S vehicle. During the contact, Officer Marques observed the following symptoms exhibited by BRAITHWAITE, droopy eye lids, dry mouth, odor of marijuana emitting from his person, and red eyes. Officer Marques', who has received formal and informal training in recognizing objective symptoms of a person under the influence of narcotics, wanted to further evaluate BRAITHWAITE.

Officer Marques had BRAITHWAITE park his vehicle and he further evaluated BRAITHWAITE in a nearby parking lot. A second CVPD officer, Officer Kirchhoefer, had responded to assist Officer Marques. While BRAITHWAITE was still seated in the vehicle, he admitted to Officer Marques that he had "smoked" marijuana approximately twenty minutes prior to the contact. Officer Marques then had BRAITHWAITE exit the vehicle. While Officer Marques was talking to BRAITHWAITE, Officer Kirchhoefer saw a small black coin bag located by the gear shifter. Officer Kirchhofer asked BRAITHWAITE if the bag was his. BRAITHWAITE responded that it was his bag. Officer Kirchhoerfer opened the bag and saw that it contained a cigarette. BRAITHWAITE told Officer Kirchhofer that the cigarette contained marijuana and that it was "a little joint". Based on Officer Kirchhoefer's training and experience, he new that to be commonly referred to as a marijuana cigarette.

Officer Kirchhoefer subsequently asked BRAITHWAITE about a black bag that was located in the rear seat. BRAITHWAITE advised that the bag was his. Officer Kirchhoefer opened it and it contained a loaded CZ model 52, 9mm handgun, serial number #ZB4434, ammunition, three separate clear plastic baggies containing marijuana, 18 Vicodin pills and $2,000.00 in U.S Currency.

Officer Marques subsequently arrested BRAITHWAITE for possession of marijuana and weapons violations and transported him to the Chula Vista Police Department.

On May 20, 2008, I conducted a criminal history check on BRAITHWAITE. According to criminal history records, on March 17 1993, BRAITHWAITE was convicted of Grand Theft; in violation of California Penal Code section 487H (A), a felony. In addition, on April 13, 1994, BRAITHWAITE was convicted of possession of a controlled substance, in violation of California Health and Safety Code 11350 (a), a felony.

On May 29, 2008, I spoke to ATF S/A Matt Beals, a Firearm Nexus expert. I described the pistol found in BRAITHWAITE'S possession to S/A Beals. S/A Beals informed me that this type of firearm was not manufactured in California. Based upon its out-of-state manufacture, I believe that the pistol possessed by BRAITHWAITE traveled in and affected interstate commerce.

CONCLUSION

Based on the aforementioned facts, I believe that there is probable cause to believe that Darrell BRAITHWAITE has violated Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

MICHAEL G. COTE
Special Agent, ATF